IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9779 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYABEN BABUBHAI VYAS

Versus

STATE OF GUJARAT THRO' DEPUTY SECRETARY

Appearance:

1. Special Civil Application No. 9779 of 2002

MR ZUBIN F BHARDA for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

GOVERNMENT PLEADER for Respondent No. 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 16/04/2003

ORAL JUDGEMENT

1. Heard learned counsel Mr Zubin Bharda for the

petitioner and learned AGP Mr H.H.Patel for the respondents.

2. By this petition under Article 226 of the Constitution of India, the petitioner-detenu has challenged the legality and validity of the order of detention dated 07.09.2002 passed against her by the Police Commissioner, Rajkot City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act).

3. The grounds for detention supplied to the detenu petitioner indicate that the petitioner is a bootlegger and she is involved in offences punishable under the Bombay Prohibition Act. She is playing with the health of the people at large by manufacturing country liquor at her residence. It is mentioned by the detaining authority in the grounds served to the detenu along with the order of detention that she has been prosecuted in three criminal cases and has been arrested in other two offences along with the material normally used in manufacturing country liquor. It is recorded by the authority that her behavior is a threat to the public health and public order. As per the grounds of detention served, three cases were registered in the year 2001 with "B" Division Police Station of Rajkot City between 19th January 2001 and 9th August 2001. The other two cases came to be registered with the same police station on 26th August 2002 and on 3rd September 2002, are under investigation. It is stated that after her arrest on 3.9.2002 where 10 liters of country liquor worth Rs.500/= was recovered along with other material worth Rs.1,610/= which can be used in manufacture of country liquor. The sponsoring machinery had started proceedings to obtain the orders from the detaining authority under PASA Act.

4 While recording the subjective satisfaction the detaining authority has considered the registration of five different offence punishable under the Bombay Prohibition Act mentioned in the table. In the grounds for detention served to the petitioner she was found involved in two other unregistered offence allegedly committed by her. It would be appropriate to reproduce the details of the cases registered for the offence punishable under the Bombay Prohibition Act mentioned in the table.

Sr.No.	Police Station & Date	CR No.	U/s. Act.	of Prohibition	Remarks
1.	B-Divi. Police Station Rajkot City 19.1.01	30/2001	66B	65-B,C,E,F	Court pending
2.	-do- 18.3.01	120/01	66B	65B,C,D,E,F	-do-
3.	-do- 9.8.01	354/01	66-B,	65-B,C,E,F	-do-
4.	-do- 26.8.02	484/02	66-B,	65,B,E,F	Pending Investi-gation.
5.	-do- 3.9.02	504/02	66-B	65-B,C,F	-do-

5 The petitioner has challenged the legality and validity of the order of detention on the number of grounds. However, Mr. Bharda has concentrated his arguments mainly on the ground that the activity of the petitioner lady ought not to have been considered a threat to the maintenance of public order. Ld. AGP Mr. Patel has placed reliance on the decision in the case of Dilip Devasibhai Vaghri vs. Commissioner of Police, Ahmedabad & Ors., reported in 1999(1)GLH p. 120, Chandulal Jethalal Jayswal vs. Commissioner of Police, reported in 1990(1) GLH p. 148, Popat Mohan Vaghri vs. State of Gujarat, reported in 1989(1) GLH p. 551 and submitted that the petition requires to be dismissed. It is also submitted that selling of country liquor or moving activities of country liquor is always danger to public health and on most of the occassions, the petitioner was found involved by the Police in such dangerous activities. It is argued that the ratio of the decision in the case of Vanrajsinh Danubha Jadeja vs. State of Gujarat & Ors., reported in 2000(1) GCD 40 (Guj.) should be applied to the present case but the say of the learned. counsel appearing for the petitioner is found relevant when it is submitted that subjective satisfaction recorded by the authority that the activity of the petitioner is dangerous qua maintenance of public order is not well founded. It is settled proposition of

law that mere commission of an offence qua body or property or the offence under the Bombay Prohibition Act cannot be said to be, by itself, an act detrimental to public order or acts on account of which public order was disturbed or is likely to be disturbed. The definition of bootlegger in clause (b) of sec. 2 of the PASA Act deals with different aspects in connection with the bootlegging activities. Sub-section (4) of Sec. 3 of the PASA Act, there is deeming friction and it provides that for the purpose of sec. 3, a person should be deemed to acting in any manner prejudicial to the maintenance of public order, when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger, drug offender or immoral traffic offender or property grabber which affect adversely or are likely to affect adversely the maintenance of public order. The present petitioner is found involved in five different criminal cases of the offences punishable under the Bombay Prohibition Act. The first case mentioned in the table shown in the grounds for detention has been registered in the year 2001 and the last one (i.e. 5th offence) has been registered with the B-Division Police station, Rajkot City on 3.9.2002. In all the five cases, police has recovered country liquor popularly known as "Laththa". Of course, the detaining authority has not mentioned that the material seized was "Laththa". The registration of five cases in one year and 4 months i.e. with 16-17 months are sufficient to conclude that the petitioner must have acted as a bootlegger. Submissions of Mr. Patel learned AGP requires to be appreciated and whereby it is submitted that the present case is not a case where in all five cases should be considered as separate offences committed by an individual. They are not simply punishable wrong under the Bombay Prohibition Act but it is an activity referred to in sub-section 4 of sec. 3 of the PASA Act. It is important to note that in any of the cases, the petitioner was not found in possession with a material which can be said to be inconsumable or liquid adulterated by any medicine or essence. So, it cannot be said that on all the occasions, the petitioner was found involved in a case of either storing, transporting or selling unconsumable country liquor, dangerous to public safety or health. Two decisions have been placed by the learned counsel appearing for the parties before this Court. In one of the decision, this court has observed that the offender should not be discriminated on the ground of nature of the liquor either country liquor or India made foreign liquor when the court is scrutinising the case whether the activities of a detenu is prejudicial to public health or not. The other decision

shows red-eye to a person who is found involved in the activity of selling or distributing country liquor. It would be appropriate to refer the ratio of the decision in case of Piyush Kantilal Mehta because the same has been referred by the learned. Single Judge while dealing with the case of Rajendra B. Rathod (supra). Mr. Patel learned AGP has also placed reliance on one of the observations made by the learned. single Judge in the cited decision. In a given case, a detenu may be a bootlegger within the meaning of sec. 2(b) of the Act, but each bootlegger cannot be or say is required to be taken into preventive detention under the provisions of the PASA Act unless justification laid down in sub-clause (4) of sec. 3 of the Act is available to the authority. Even a person is found actively involved either in selling or transporting the prohibited liquor, it should be satisfactorily established that his activities as bootlegger affects adversely to the maintenance of public order and/or public health. The subjective satisfaction also can be recorded if there is any material before the detaining authority that the bootlegging activities of proposed detenu are likely to affect adversely to the maintenance of public order. In many occassions, repeated offence committed by a person are not affecting the maintenance of public order. The activities or conduct of a bootlegger should be of type whereby it can reasonably be inferred that the same is prejudicial to the maintenance of public order. Feeling of insecurity amongst general public, creation of panic or fear in the minds of members of public, even tempo of life of community are the factors requires considerations while recording the subjective satisfaction. In case of Piyush Kantilal Mehta, the court scrutinised the legality and validity of the order of detention passed by the authority, and was satisfied that by indulging in use of force and violence and by illegal sell of liquor, the detenu had created an atmosphere of fear and terror by beating innocent citizen. There was also convincing material before the detaining authority as well as before the court that the activities of the detenue-Piyush Kantilal Mehta were adverse to the community and social activities and same were against the maintenance of public order. In the present case, these elements are materially missing. The total quantity of country liquor in all the five occasions found is not alarming. This Court has been assisted by the counsel and they have cited number of decisions of the cases wherein detenus were bootleggers. The touch stone to test the breach of the public order or the activities prejudicial to it is the nature of activities, which can be terms as antisocial, exceeding the breach of law. Crossing of a

limits of such activities have been considered only found relevant factor practically in all cited decisions either directly or indirectly. It is true that selling of country liquor by itself is a threat and it is likely to affect adversely the health of the people whoever consumes. But only on this count, a bootlegger cannot be detained under the law of preventive detention otherwise the person found involved in one, two or three criminal offence punishable under the Bombay Prohibition Act where the investigating agency has recovered country liquor could be detained under the deeming friction provided in sub-section 4 of sec. 3 of the PASA Act. So, there must be sufficient material on record to show that the act of the detenu is putting the entire social apparatus in disorder making out difficult for the whole system to exist as a system governed by rule of law.

6 In the present case, the table shows that the petitioner was found involved in three criminal cases punishable under the Bombay Prohibition Act in the year 2001 that too in first eight months, and thereafter 4th offence came to be registered on 26.8.2002 that is to say after one year. The 5th offence came to be registered on 3.9.2002 and the order of detention passed on 7.9.2002. It is true that two events of unregistered offence is referred and considered by the detaining authority but comparison of the material and the allegations made in the present case with the cited decisions brought to the notice of this court, the court is of the view that the allegations in the case of Piyush Kantilal Menta and Vanrajsinh Danubha Jadeja (supra) there was no material before the detaining authority under which it could be said or concluded that the activity of the detenu as bootlegger constitutes a case of breach of public order. Frequency of committing similar type of offence if is found high, may create a challenge to maintenance of law and order in the society or in the area. each habitual offenders cannot be detained only on the ground that he commits similar type of offence as a regular interval. The time gap of one year between the third and fourth offence takes me to a conclusion that this is a case of breach of law and order and not public order. This infirmity goes to the root of the validity of the order passed by the authority and therefore, the order cannot sustained.

7 I am in agreement with the submissions of Mr. Bharda that the decision of this court in the case of Vindobhai Kalubhai Koli vs. State of Gujarat (Special Civil Application No. 4925 of 2002 dated 12.8.2002 is helpful to the petitioner.

8. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 7.9.2002 passed by the Commissioner of Police, Rajkot City, is hereby quashed and set aside and the detenu is hereby ordered to be set at liberty forthwith if she is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

16-04-2003 [C. K.BUCH, J]

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